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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA Plaintiff, v. JOSE VALDIVIA-JACINTO, Defendant.	Criminal Case No. 08CR2527-JLS DATE: September 15, 2008 TIME: 9:00 a.m. COURT: The Hon. Janis L. Sammartino UNITED STATES' MOTIONS FOR: (1) RECIPROCAL DISCOVERY; AND (2) FINGERPRINT EXEMPLARS. TOGETHER WITH MEMORANDUM OF POINTS AND AUTHORITIES

COMES NOW the plaintiff, the UNITED STATES OF AMERICA, by and through its counsel, KAREN P. HEWITT, United States Attorney, and Carlos O. Cantu, Special Assistant United States Attorney, and hereby files its Motions for Reciprocal Discovery and Fingerprint Exemplars. These Motions are based upon the files and records of the case together with the attached memorandum of points and authorities.

I

STATEMENT OF THE CASE

On July 30, 2008, an Indictment was returned in the Southern District of California charging Defendant Jose Valdivia-Jacinto ("Defendant") with being an alien found in the United States after deportation, in violation of 8 U.S.C. § 1326(a) and (b). On August 5, 2008, the Court arraigned Defendant on the Indictment and Defendant entered a "not guilty" plea. The Court scheduled a motion hearing date for September 5, 2008. At the hearing on September 5, 2008, Defendant requested a trial date. The Court scheduled a trial date for September 16, 2008.

II

THE UNITED STATES' MOTION FOR RECIPROCAL DISCOVERY SHOULD BE GRANTED

The United States provided discovery between July 18, 2008, and September 5, 2008. The United States requests that Defendant comply with Rule 16(b) of the Federal Rules of Criminal Procedure, as well as Rule 26.2 which requires the production of prior statements of all witnesses, except for those of Defendant. The United States will object at trial and ask this Court to suppress any evidence at trial which has not been provided to the United States.

III

THE UNITED STATES' MOTION FOR FINGERPRINT EXEMPLARS SHOULD BE GRANTED

Part of the United States' burden of proof in this case is to satisfy the jury that Defendant was an alien, previously deported, and without permission to reenter the United States. To make that showing, the United States may call an expert in fingerprint identification to match Defendant's fingerprints to relevant evidence. The most efficient and conclusive manner of establishing this information is to permit the expert witness himself to take a set of Defendant's fingerprints for comparison.

A defendant's fingerprints are not testimonial evidence. See Schmerber v. California, 384 U.S. 757 (1966). Using identifying physical characteristics, such as fingerprints, does not violate a defendant's Fifth Amendment right against self-incrimination. United States v. DePalma, 414 F.2d 394, 397 (9th Cir. 1969); Woods v. United States, 397 F.2d 156 (9th Cir. 1968); see also United States v. St. Onge, 676 F. Supp. 1041, 1043 (D. Mont. 1987). The United States therefore requests that this Court order that Defendant make himself available for fingerprinting by the United States.

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IV

CONCLUSION

For the foregoing reasons, the United States respectfully requests that the Court grant its motions for reciprocal discovery and fingerprint exemplars.

DATED: September 6, 2008

Respectfully submitted,

KAREN P. HEWITT
United States Attorney

s/ Carlos O. Cantu
CARLOS O. CANTU
Special Assistant United States Attorney
Attorneys for Plaintiff
United States of America

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. JESUS VALDIVIA-JACINTO, Defendant.	Criminal Case No. 08CR2527-JLS **CERTIFICATE OF SERVICE**

IT IS HEREBY CERTIFIED THAT:

I, CARLOS O. CANTU, am a citizen of the United States and am at least eighteen years of age. My business address is 880 Front Street, Room 6293, San Diego, California 92101-8893.

I am not a party to the above-entitled action. I have caused service of United States' Motions for (1) reciprocal discovery and (2) fingerprint exemplars, together with memorandum of points and authorities on the following parties by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

1. Norma Aguilar, Esq.
   Attorney for Defendant

I hereby certify that I have caused to be mailed the foregoing, by the United States Postal Service, to the following non-ECF participants on this case:

None

the last known address, at which place there is delivery service of mail from the United States Postal Service.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 6, 2008.

s/ Carlos O. Cantu
CARLOS O. CANTU